IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5301 of 1984

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHIMANLAL CHAKUBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5301 of 1984

MR BH MEHTA for Petitioner No. 1

MR JS PARMAR for Petitioner No. 1

MR PV HATHI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-2

DELETED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 29/09/2004

ORAL JUDGEMENT

1. The short facts of the case are that the petitioner appears to have purchased the land admeasuring 1 acre 32 gunthas bearing Survey No.108 of Village Anandpar (Navagam) from one Memon Dada Musa. The entry No.117 was mutated in the revenue record on 20.11.1986 for the sale deed dated 10th September, 1985 and the said entry was certified on 8.1.1967. It appears that thereafter it came to the knowledge of the authority under Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance, 1949 (hereinafter referred to as the "Ordinance") and show-cause notice was issued to the petitioner on 5.7.1979 to show cause as to why the transaction of sale should not be declared as null and void. It is the case of the petitioner that the petitioner was not given opportunity of hearing. However, ultimately the order dated 31.3.1980 has been passed by the Dy. Collector, whereby it is found by him that the land was originally owned by Khatedar Ranchhod Jadavji Mulji, who was an agriculturist. However, the said land was sold to Memon Dada Musa, who was non-agriculturist and thereafter the said Memon Dada Musa sold the said land to petitioner by registered sale deed and the said Dada Musa as well as the petitioner are non-agriculturist and, therefore, it was found by the Dy. Collector that the entry is wrongly recorded of the sale transaction and it was further found that the report was also not produced before the certification of the entry to verify as to whether the purchaser is an agriculturist or not and ultimately he passed an order dated 31.3.1980, whereby the transaction of sale was set aside under Section 54 of the Ordinance and the land was ordered to be treated as the government land. It appears that the petitioner carried the matter before the Collector and the Collector ultimately, as per the order dated 20.2.1984 dismissed the appeal at the admission stage. The petitioner preferred revision under Section 211 under Bombay Land Revenue Code before the State Government and in the said revision also after hearing both the sides, the revision is dismissed. However, the pertinent aspect is that it has been recorded in the said order passed by the State Government that on 31.12.1983 the possession of the land in question is also taken over by the State Government and, therefore, nothing further is required to be done in the revision and it was found that the orders passed by the lower Authority does not call for interference and it is under this circumstances, the petitioner has approached this Court by the present petition.

2. Heard Mr.Mehta with Mr.Hathy, learned Counsel for

the petitioner and Mr.Gori, learned AGP for respondents No.1 and 2. So far as original respondent No.3 is concerned, he is deleted as per the order dated 27.9.1995.

3. It is not the contention of the petitioner that the petitioner was an agriculturist at the time when the land was purchased and, therefore, as per the provisions of the Ordinance, the transaction of sale is barred and, therefore, in my view, whether the opportunity was given before the Dy. Collector or not would not make any difference to the facts of the present case.

4. Apart from the above, it is one of the defences of the petitioner that the petitioner has simultaneously purchased another agricultural land admeasuring 7 acre 8 gunthas of Village Nakarwadi from one Lakhu Beema and for purchasing of the said land the petitioner had applied to the respondent Dy. Collector for grant of permission under Section 41-49 read with Rule 18 of the Ordinance and such permission was granted and, therefore, the case of the petitioner is two fold, one is that by virtue of the permission granted, the petitioner can be said as the agriculturist of land in question and the second is that in any event, the petitioner could have applied to the competent authority under the Ordinance for grant of permission on the same line as it was granted in respect of the land of Village Nakarwadi. So far as the first contention is concerned, the permission has been granted on 1.9.1966, whereas the registered sale deed of the land in question is executed on 10.9.1965 and, therefore, on the date when the registered sale deed came to be executed in favour of the petitioner in respect to the land in question the petitioner was not agriculturist and, therefore, the petitioner cannot validly take shelter of the other land for which the permission has been granted on 1.9.1966 and, therefore, the said aspect would be of no help to the petitioner. So far as the second aspect is concerned that the petitioner could have applied to the Dy. Collector for grant of permission to purchase the land is concerned, it appears that as such the order passed by the Dy. Collector on forfeiture of the land is implemented long back i.e. as back as on 21.12.1983 and even pending the proceedings before the State Government and the Dy. Collector, the petitioner has not made any attempt to apply for permission to purchase the land or for any post facto permission.

5. Mr.Mehta, learned Counsel for petitioner made statement at the bar that the land, thereafter, is allotted to I.O.C. by the State Government and when the

said Corporation wanted to develop the land, the petitioner has preferred Regular Civil Suit No.1069/1984 in the Court of Civil Judge (S.D.) Rajkot and the said suit is pending.

6. Be as it may, the petitioner may pursue the rights available under the law in the proceedings of the civil suit, but if the land is already allotted by the State Government to I.O.C., there may not be any question of giving opportunity to the petitioner for post facto permission.

7. In view of the above, I find that the petition is meritless and the same deserves to be dismissed and hence dismissed accordingly. Rule discharged. I.R. stands vacated.

29.9.2004 (Jayant Patel, J.)

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